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Coudert, Frederic René

The arbitration treaties

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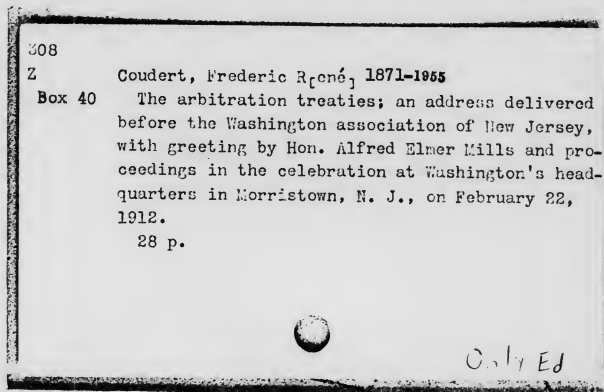
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THE ARBITRATION TREATIES

AN ADDRESS DELIVERED BY THE

HON. FREDERIC R. COUDERT

BEFORE

THE WASHINGTON ASSOCIATION

OF NEW JERSEY

With Greeting by HON. ALFRED ELMER MILLS
and Proceedings in the Celebration

AT WASHINGTON'S HEADQUARTERS

IN MORRISTOWN, N. J.

On February 22, 1912

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WASHINGTON ASSOCIATION OF NEW JERSEY

HEADQUARTERS, MORRISTOWN, NEW JERSEY,
February 22, 1912.

Hon. Alfred Elmer Mills, First Vice-President, took the Chair and called the Association to order.

MR. MILLS:

We will open our exercises this afternoon by singing "America." Mr. Bennell will lead us.
[Singing of "America."]

MR. WILLARD W. CUTLER:

Our honored President, Mr. Jonathan W. Roberts, who, by reason of his physical infirmity, is not able to be with us to-day, desires me on his behalf to wish each and all of you a hearty welcome and to express the hope that you will all have a very enjoyable time this afternoon. You all know his love for this Association, and he wanted me to be sure to make the announcement that there are two vacancies in the Association caused by death and that application for membership may be made to any one of the officers.

MR. STEPHEN S. DAY:

I beg, sir, to present the following resolution and move that it be adopted by a rising vote:

Resolved, That the secretary be requested to extend to our esteemed and venerable President, Mr. Jonathan W. Roberts, our heartfelt congratulations and warmest love at this time.

MR. MILLS:

You have heard this resolution of greeting to our President. All in favor of the passing of this resolution will please rise. (The entire audience arose.) It is carried unanimously.

Our President, Mr. Roberts, has requested me to act as your chairman to-day, and I assure you, gentlemen, I appreciate it as a very great honor.

Welcome once more to the old home, your home, our home—the home of all patriotic Americans.

In these days of political and social unrest it is pleasant to be near the old headquarters, whose very walls seem to whisper, "Hold fast to that which is Good."

So far as I have been able to observe the frosts of winter appear to have dealt kindly with you, notwithstanding the depleted condition of your coal bins.

After all, we in the East know nothing about cold. A friend of mine just returned from the great Northwest reports that a month ago the cold became so intense that one day while he was out in a field, watching a lot of sheep jumping over a stile, suddenly they were suspended in mid air, frozen stiff! I said, "Good Lord, man! The law of gravity wouldn't permit it." He replied, "The law of gravity! Why, the law of gravity was frozen too." [Laughter.] I am glad to see that your gravity has not been frozen.

This is a great country, gentlemen, a great country. If we live long enough it is possible we may find more of our good old laws frozen stiff.

Your executive committee had hoped to have the great honor of having the President of the United States with us this afternoon. He is unable to attend, but, gentlemen, we will forgive him. He has done his very best to atone for the omission by appointing one of our members to the bench of the Supreme Court of the United States. [Applause.]

(A Member)—Three cheers for Chancellor Pitney.

[Cheers were heartily given, with a Tiger.]

[Cries of Speech! Speech! Speech!]

MR. MAHLON PITNEY (standing in his place near the entrance):

I thank you very much for this reception, and for the cordial greetings that I have received here to-day. I could

not possibly speak on this occasion, even were it proper for me so to do. My heart is too full to find expression in spoken words.

I have enjoyed to the utmost my meeting with you to-day, and the kind congratulations and hearty expressions of interest that I have received from all. My cup of happiness is filled to overflowing. I thank you again and beg to be excused. [Applause]

MR. MILLS:

We will let the Chancellor off this time on one condition, and that is, that he will come back before he is made Chief Justice and deliver our Washington's Birthday Address.

As you know, we have two objects in gathering here. One is the gratification of our social instincts by the delightful intercourse that we have with one another, the shaking of hands and greeting of old friends. And the other is the appeal to our higher natures through some distinguished speaker, qualified to address us with authority on some great problem of the day.

Our dear President, Mr. Roberts, has often told us that two subjects only were barred from these meetings—partisan politics and sectarian religion. Why sectarian religion is barred is best illustrated by telling you of a little experience that I had many years ago on a small transatlantic liner. Two eminent doctors of divinity, one weighing about three hundred pounds and the other very small, were walking on the deck. The vessel gave a sudden lurch, and the big man came down with a crash on the small one, who immediately cried out, "Hold, Brother Jones, this is a very poor place for spreading the gospel." [Laughter.] I see you all agree.

Partisan politics are barred because our Association is a trust—I shouldn't say a trust, that will hardly do—is an organization for the dissemination of patriotism throughout the whole country. We are not for any party or faction, but for the whole people. An eminent English statesman, I think it

was Lord John Russell, was once asked by Mr. Hume, what is the object of a political career, what should every legislator strive after. He replied, "The greatest good to the greatest number, of course." "Well, what is the greatest number?" "Number one," replied the great politician. That is partisan politics. [Laughter]

Before we part, gentlemen, it is fitting that we pause and consider the losses that we have suffered during the past year. The hand of death has been laid upon nine of our members. We miss them all. One in particular, Dr. Stephen Pierson, who so often presided over our gatherings, was endeared to every one of us. He was a noble man. He gave his life for others. If he could send us a message to-day, he would ask us not to mourn. No man ever had a greater fondness for his fellow-man than our dear Doctor; no one has ever passed from this earth more in harmony with Tennyson's beautiful lines:

"Sunset and evening star,
And one clear call for me;
And may there be no moaning of the bar,
When I put out to sea."

Our lives are better and brighter for having known our beloved physician.

This afternoon we are to listen to an address upon "Arbitration," or rather upon the "Arbitration Treaties." I think I am safe in saying that all of us want to believe in arbitration. Most of us believe that arbitration is practicable among the leading nations of the world. Some of us, a few, I believe, think that it is impossible while human nature remains as it is. These few think of arbitration in the same way that Charles James Fox once thought of Edmund Burke. He said, "Burke is generally right, but he is right too soon." [Laughter.]

You will observe that the American Eagle has been watching our exercises to-day. He has flown in, gentlemen, because he has heard that we are to have a talk on arbitration. Now, the eagle believes in arbitration most heartily, but it must be arbitration that will bring us peace with honor. He is a very

gentle bird, but if he is attacked or imposed upon, the Roman Eagles under the mightiest of the Cæsars were not a circumstance to him.

We are very fortunate this afternoon in having with us as our speaker the grandson of a friend of the great Lafayette; the son of the distinguished lawyer who was one of the counsel for the United States in the Bering Sea arbitration matter at Paris some twenty years ago and who was later appointed by President Cleveland on the Venezuelan Boundary Commission. I know of no one, gentlemen, who has made a more exhaustive study of arbitration or who is better qualified to address us on the Arbitration Treaties than the speaker of the day.

I take very great pleasure in introducing Mr. Frederic R. Coudert, of New York. [Applause.]

THE ARBITRATION TREATIES

An Address before the Washington Association of New Jersey

BY MR. FREDERIC R. COUDERT

Mr. Chairman and Gentlemen :

I hope your Chairman is as good a prophet as he is a talker. If so, I will come out well, but I have my doubts.

The Secretary of this Association, with that wisdom which I am sure all of the members of the Association—even the newest—possess, and with that knowledge of human kind, born of experience, wrote me a most courteous letter in which he suggested, among other things, that the usual limit of the day's oration was forty minutes. Warned in this kindly fashion, I have placed before me a monitor which will tell me when it is necessary to pull at my own coat tail, because I know that the politeness of the audience is such that nobody else will venture to do it; and I also recognize that your patriotism, while almost unlimited, yet may be strained to the breaking point and I have no wish to overtax it or your patience.

I had the great honor to-day of being made a member of this Association, for which I most sincerely thank its members, for I knew that it was a great honor. I knew that it was an Association whose purpose was to maintain those great ideals for which this country stands. That great French thinker, Taine, once said: "*Les idées font les passions*" (ideas create passions). It is indeed ideas and ideals that make and direct human passions for weal or woe. And this is one of those great patriotic organizations, which, setting high those ideals, aid to create those human

passions which operate for the good of the nation; and therefore I was pleased and greatly honored to become a member.

And then I rejoiced to learn, from a narrow, more personal and perhaps more egotistical standpoint, that it has now become the indispensable stepping-stone to a justice-ship on the Supreme Court bench. This honor is therefore particularly gratifying to me, because, while I do not share in the political philosophy of the gentleman from Tennessee, who said that he didn't care what happened, as long as it didn't happen to him, nevertheless I am gratified to think that the first qualification for that high post I have complied with. I am confident by reason of personal experience that had the learned Chancellor and Justice been in the exercise of his functions for any length of time he would gladly have welcomed the opportunity to speak, because he is now to be condemned to perpetual silence. Day after day must he listen to the lawyers with scarcely an opportunity to strike back save an occasional underhand blow in a carefully couched opinion. I know of no refuge for him unless he takes the view of a judge whom I once heard reproached somewhat mildly by counsel for not listening, and who replied:

"My dear sir, the constitution and the laws of this state prescribe that judges shall hear cases, but they say nothing about listening to them."

My friends, the occasion is unique. We are not here merely for the purpose of bringing flowers to the most honored grave in America. That is a pious, a beautiful, a noble duty and an honored function. Every nation must be judged by the character of its saints and of its heroes and each nation reverences in them those attributes which it most honors and most respects. But there is something even more important than filial piety and honor for the race, the nation and its achievements. There is something even more important than merely reverencing our great na-

tional heroes. It is the carrying on to-day of the work in which they would be engaged if they were here, with their characters, their powers and their greatness. And the question is, how shall we most honor them? For if we respect the ideals to which we once a year give full lip service, then the question is, what shall we do every other day of the year toward making those ideals good in actual practice?

Your Chairman has said, with the graceful, courteous manner that characterizes him, that partisan politics are barred. There is one great question before this country, however, to-day, that smacks in no wise of partisanship. It is bigger than any man; it is bigger than the nation; it is as large as the world; it is based on the brotherhood of man. It can be opposed, in practice perhaps, as premature; it cannot be opposed in theory and in the abstract save by those whose partisanship and whose love of locality is greater than their respect for the race as a whole. America, I am glad to say, has for a long time taken the leadership in the cause of peace. Arbitration treaty after arbitration treaty has been proposed by the Executive and many of them ratified by the Senate. But to-day we stand, I think, almost at the parting of the ways. The question is, whether we mean to make that great principle the normal method of settling disputes and thus maintain the leadership that we have taken in that cause, or whether, misled, as I think, by partisan and particularist arguments, we are to throw aside that opportunity and postpone the great cause indefinitely or allow others to take it up.

We are on the verge of celebrating with heartfelt rejoicing and appropriate ceremony one hundred years of Peace among the English-speaking peoples. Ever since the Treaty of Ghent our differences with Great Britain, and they have been numerous, have been satisfactorily adjusted by arbitration.

With France our relations have from the beginning of our nation ever been of the closest. Never should we forget

that it was French enthusiasm, French money, French ships and French blood that insured our independence; nor can we be unmindful of the fact that, by her superlative achievements in the world of Art, of Letters and of Thought, that great nation has ever exercised a peculiarly beneficent, sympathetic and liberalizing influence upon America.

To-day an opportunity of assuring permanent peace among these three leading nations in the civilized world by outlawing war as a solution of controversies is presented to this nation. The adoption of the proposed treaties will mark definitely an epoch in the development of the most enlightened portion of mankind, when, after centuries of experience, an impartial, dignified, legal tribunal is decreed to be in all events preferable for the settlement of disputes to the blind arbitrament of war.

The occasion seems so unique; the moment so opportune for America to take the leading part in such a work that it is difficult to calmly discuss with those who would on any pretext renounce the opportunity. Yet we cannot ignore the very grave danger that the same threadbare arguments, which in 1897 defeated that most excellent treaty of general arbitration then proposed (Olney-Pauncefote Treaty), may again prevail, and to-day we hear that by the acceptance of these Treaties we are placing in jeopardy our "national honor" and endangering the maintenance of a traditional policy.

No sane American now advocates war as such. It is no longer the fashion to gravely argue in favor of the manifest benefits of national blood-letting. The advantages accruing to a nation by killing and maiming the flower of its manhood are no longer seriously dwelt upon.

As a national ideal the City-sacker of Homer or the fearless son of Thetis whom Horace so graphically describes has had his day:

Heu, nefas, heu!
Nescios fari pueros Achivis
Ureret flammis etiam latentem
Matris in alvo.

The efficacy of this remedy for possible national degeneration has been tried through the long centuries and too often found wanting. Thus, as a general proposition, the naked thesis of war, as a measure of national sanitation, has few advocates whose mental integrity is not in question.

Not only statesmen but all earnest-minded citizens now admit the validity and the propriety of arbitration as a solution for many, if not most, international controversies. Even the most ardent militarist admits that war must be the exceptional method—arbitration the normal method of settlement.

The very exceptions that it is urged we should put in the Arbitration Treaties are of themselves evidence that war has ceased to be the normal method and become an abnormal or extraordinary resort. This recognition is a great advance.

In the Middle Ages there was at least one great power possessing the moral force and political prestige enabling it to settle many controversies and to serve as a center of European solidarity. The Papacy could and did not infrequently extend its immense influence to settling International controversies. But from the Sixteenth Century almost up to the present day Europe has had no generally accepted, recognized tribunal, organized to settle disputes between Nations. It is indeed difficult to compose disputes when no court is ready at hand to hear the suitors, and war is far more probable where no forum, save the battlefield, lies ready for the presentation of claims and causes. The establishment of The Hague Tribunal has finally furnished this great International Court, and in this movement toward the substitution of law for force, and forensic argu-

ment for the music of Krupp guns and the tears of women and children, the United States rightly claims a leading role.

Now, our honored President, some months ago, proposed in a great banquet a general treaty of arbitration, submitting to judicial settlement all justiciable questions. I am glad to say that the first man that arose and said to him: "I am your man. My people are with you," was the representative of that great nation who, through the dark days of despair, when American independence hung in the balance, threw into that balance scale her treasury and her best blood. It was Mr. Jusserand [applause], the representative of that great people, who was the first to say: "Our people will enter into such a treaty with you." And the next man to welcome the proposition was the representative of the great British Empire, Earl Grey, who, as soon as he heard the news—he might have been as prompt as Mr. Jusserand if he had been within actual hearing of the President's words—stated in the House of Commons that he wished to join hands with America in the movement for general arbitration.

What are these treaties about which so much has been said? Are they the iridescent dreams of mere pacifists? Are they the mawkish sentimentalities of people whom we may like as kindly humanitarians, but whom we might characterize, to use the word of one of our great citizens, as "mollycoddles"? Not at all, not at all, gentlemen. These treaties codify and declare already existing American practice. And this, gentlemen, I cannot insist upon too much—these treaties in effect merely say: Every justiciable question shall be submitted to arbitration.

We have many treaties of arbitration but they contain exceptions, such as "national honor" and "vital interests," the very questions out of which wars usually arise. The distinctive feature of the proposed treaties is that they make no such exceptions.

Now, what is a justiciable question? It is the kind of question that every man who lives at all in active life may have thrust upon him every day. It may be some controversy with his neighbor over some matter of business or of the ordinary relations of men in society, which it has been the habit to submit to some kind of a tribunal for centuries. I take it that the law, if it is nothing else, is at least a fair substitute for a street fight. Mankind has found in the evolution of time that it is better to submit their difficulties to a tribunal, however human and inadequate, rather than to fight out their controversies, arms in hand. That once accomplished was a tremendous progress. Even in the most civilized nations it is not wholly and absolutely an effected fact as yet; for on parts of the continent of Europe there are some matters which gentlemen say are so important that they cannot be submitted to any tribunal. These are so-called questions of personal honor to adjust which we must repair to some open space, in light athletic costume, with bare swords, and see who will draw the first blood in order that we may know on which side justice and right are. Fortunately, the growth of the comic supplement of the newspapers and the activities of the kodak fiend have robbed the important institution of the duel of that halo that was once thrown over it as evidencing a judgment of divine providence upon the merits of the question at issue.

In the old days in England, from which we derive our procedure, a man might, if he did not like the slow process of the law courts—there being no recall and no quick method of getting rid of the judges—offer to wage his battle and then with sword and spear it would be determined whether X had promised to pay Y a certain bond, or whether X or Y owned a certain piece of land. And at a still earlier date there was a most expeditious and decisive method of determining controverted questions of guilt. No necessity for the expense of counsel, the delays of judges, the hair splitting of lawyers, but the defendant was told to

walk on a red-hot iron and if he had committed no crime the iron would not burn him. There, surely, was a perfectly simple, expeditious, and apparently excellent method of procedure. It satisfied honor, but it usually hurt the feet, and it was finally given up entirely, so that in time, with a few exceptions, we have come to resign even honor to the ordinary courts in all nations. There are practically no exceptions to this generally accepted situation.

The question now arises whether those processes which have worked satisfactorily within the nation will work without the nation when the nation is confronted in the family of nations with other nations. Is there any reason why it should not? Is arbitration anything so new, so intangible, so fantastic, so unthinkable that it cannot be done? If we go back to Greek history we have several instances of arbitration among the great cities of those intelligent peoples, and down through the ages we have had arbitrations, but never has any country had so many arbitrations nor stood so strongly for the adjustment of difficulties by legal settlement as has the United States of America.

The disinterested desire of the people of the United States for the maintenance of peace leaves no room for cavil. The United States covets no territory, cherishes no national animosities, has no ancient grievances, real or fancied, to avenge, and her size, her wealth and her historic past make it impossible to question the sincerity of her motives in seeking to insure the peaceful settlement of disputes. Her geographic position, the traditions of her people, her past practices and present professions indicate America as the natural leader in the cause of arbitration. Whether she is to assume this role which happy circumstances, and what that wisest of political philosophers, Montesquieu, called "*La nature des choses*," so imperatively dictate, seems to depend in great measure upon her consummation of the two proposed treaties. Should she now, and

at the eleventh hour, because of lawyers' quibblings and vague, meaningless talk of "national honor," reject the treaties that she has herself proposed, it is hard to believe that the Nations of the world will continue to look upon America as sincerely desirous of substituting law for force, arbitration for war.

It is not easy to justify further delay in the ratification of these treaties.

Yet sincere and patriotic men are found who gravely and strenuously insist that the treaties are dangerous because too general, and that there should be contained therein broad reservations in favor of "national honor," "vital interest," or "national policies." If this be so, must we, because of these catch phrases, indefinitely continue to postpone the most complete guarantees of peace with Great Britain and France? Our best instincts must become atrophied, our highest interests imperiled, because men continue to prate about a "national honor" which they cannot define and which indeed can never be so completely sullied as by deliberately preferring to risk the solution of difficulties by war rather than to guarantee the supremacy of law and the accepted maxims of legalized justice.

Let us rid ourselves of cant. "National honor" is the sonorous phrase under which the civilized man cloaks those feelings of the primitive man only partially submerged within him. It is the excuse for permitting the reasoning faculties of the rational and evolved man to be numbed by the natural cravings of the lower animal to claw and bite those who excite his wrath. The emptier and vainer a nation's intellect, the greater becomes the clamor for "national honor." In the individual, the honor which shuns the settlement of disputes in the legal forum, is usually denominated "ruffianism," and in the United States is quite effectively disposed of by the Police Courts, whose jurisdiction would be greatly minimized if cases of supposed individual honor were excepted from their jurisdiction.

Now, a justiciable controversy is every controversy of which a court, as usually constituted, may take cognizance. Between nations that would mean practically all controversies which involve a claim of right.

If you want to get rid of most wars, if you want to approach the age when war disappears as antiquated and anachronistic, the only way you can do it is to have some tribunal to which men can submit their controversies. If there is no place to which men, or nations, may resort for settlement of their disputes, they are bound to settle them by force, and the difficulty, therefore, with arbitration heretofore has been that we have always had to engage in a diplomatic controversy first and thus usually engendered much bitterness of feeling before any tribunal was formed. But to-day, when a controversy arises, a tribunal is already in existence, composed of the best and most dignified citizens of the world, ready to pass upon that case, and the responsibility of a nation that says "we refuse to go to The Hague, a tribunal constituted by ourselves, but would rather rely upon our own *ex parte* views and fight this thing out on the open ocean," is a very serious one. Thus the first great practical move in bringing about a settlement by arbitration was the establishment of The Hague Tribunal.

But what is a tribunal without suitors? There was a time when the Supreme Court of the United States had to adjourn for lack of business. To-day it would like to adjourn by reason of the pressure of business. But in its early days there was a time when it had few suitors. There was a time, prior to its existence when, during the debates on the ratification of the Constitution, men seriously argued that to compel the states to submit their controversies to a great national tribunal was a surrender of national honor,—the very question that is raised to-day to defeat these treaties. And yet did North Carolina feel that she had sacrificed her national honor a few years ago because she was forced by a judgment of the Supreme Court of the United

States to pay certain bonds? Would it not seem to us very grotesque at the present day were North Carolina and North Dakota to engage in the diversion of sending roaming bands of soldiers over the country to settle the question as to whether certain North Carolina bonds were validly issued or not? And yet a hundred or more years ago that very result was imminent and it finally led to a situation which demanded a great national tribunal to which all inter-state controversies must be submitted without exception. I take it that the great State of New York to-day does not feel that it is surrendering its national honor to the great State of New Jersey because it may forsooth be necessary to submit to the Supreme Court of the United States certain charges and countercharges of having polluted the intervening waters. I take it that the question as to whether the waters were polluted or not could better be settled by the reports of the bacteriologists in the great laboratories than by sending the New Jersey militia to fight it out with the New York militia in the subway. Much blood might be spilled but no water would thereby be purified.

We talk of national honor. How many questions of national honor have we not submitted to a Court? Has not almost every arbitration that the United States has had with Great Britain been based on a controversy which might have been tortured into a question of national honor and which a lot of Jingoists said was a question of national honor and hence opposed it? There are two methods of settling disputes: the method by war and the method by diplomacy and arbitration. The method by war until, we will say, a hundred years ago, was the normal, general method. If one nation had a dispute with another nation, "fight-it-out" was the watchword, the same underlying, psychological principle that made the English costermonger of tradition say of the foreigner: "'Es a foreigner; 'eave 'alf a brick at 'im." Don't give the foreigner the bene-

fit of any doubt. That was the usual normal point of view.

The abnormal, extraordinary, acceptable method was trial before an arbitral tribunal, much as individual men do among themselves. But within the last hundred years the normal method has become the method of arbitrament.

We have tried both methods with this very Great Britain.

Dealing in abstractions is always dangerous. When you deal with abstract principles, when you deal with words, you are apt to be misled. It is always wiser to deal with the concrete, actual, existing thing and to see if the principles which you are advocating have actually worked in practice.

We have tried the abnormal method and we have tried the normal method. We tried the abnormal method in 1812. Prior to that time, as early as 1795, we had already made a treaty with Great Britain, involving arbitration. The fifth clause of the famous Jay treaty provided that certain controverted questions of boundary should be submitted to an arbitration board. That treaty was one of the most unpopular, perhaps the most unpopular treaty ever passed in this country, so much so that John Jay was said to have lost the presidency because he had the manhood, the patriotism and the courage to carry it through.

Then came the war of 1812.

Let us analyze the causes of that war and see how far and how satisfactorily they were settled by the abnormal method, the old-fashioned method of settling matters of national honor and vital interest,—war.

There were two great causes for the war. England was in a death struggle with the most gigantic intellect the world had seen since Caesar. Napoleon commanded the best armies on the continent of Europe and England was dominant on the sea. When England destroyed the French fleet at Trafalgar, Napoleon, without a moment's hesitation, said: "We must conquer England by land since we have

failed to conquer her by sea." He then proceeded to conquer the continent and from Berlin, after the great victory at Jena, issued the famous Berlin decrees shutting out from continental ports English goods for the purpose of starving and strangling the "shopkeeper" nation, as he liked to call them, and from Lisbon to Dantzic, in every port where a ship could enter, were French custom officers ready to seize her, to condemn her, and confiscate her property as prize. Then England retaliated by the harshest kind of measures, violating—it is true—the principles of International Law, for England declared all the coast of France blockaded, a great paper blockade, which could not possibly be enforced, but which nevertheless enabled her to seize every neutral vessel on the high seas and condemn it as a prize, if it were headed for the continent. Outside of English commerce the great mass of sea-borne traffic was American. We had two-thirds as much commerce as England in those days and these measures meant the financial death of our merchants who were carrying on that great trade; they were ground between Napoleon and England, in England's great struggle to retain her Empire. If they headed for the Continent the British cruisers seized them; if they went to England first, they were in danger because they could not then go to a continental port without being confiscated by Napoleon's revenue officers, so that the Continent—the whole of the European continent,—was, after the treaty of Tilsit, absolutely shut out to our trade.

These orders in council we indeed protested against and protested against for a long time in vain. They engendered a bitterness of feeling perhaps even greater than that which led to the war of Independence. We have not completely outgrown it yet, and the school books in my day,—I am sorry to say—I believe they have changed for the better since then,—filled us boys with a hatred of England because of her harsh conduct in the period preceding the war of 1812. But we must remember in extenuation of Great

Britain, if she violated the laws of nations at that time, that she was engaged in the great and final struggle that meant that either she and her whole empire must go down to ruin, or that Napoleon's supremacy in Europe must come to an end, and in order to continue the struggle she had to starve the continental ports where Napoleon's armies recruited their supplies.

Under such circumstances America naturally raised the questions as to the invalidity and the illegality of these orders in council, and the controversy thus engendered was the first cause of the war.

The second cause of the war was the impressment of seamen on the high seas. Englishmen took the view, the question was not then a settled one in International Law, that they had the right to seize deserters from their vessels, or that they had the right to seize English seamen on American ships wherever they could find them. In other words they held to the doctrine of once an Englishman, always an Englishman, the doctrine of indelible allegiance. They held up our vessels and, as we claimed and claimed rightly, outraged our national dignity by taking seamen off our ships.

These were certainly two sufficient causes of complaint. Moreover, our people at that time did not understand what we understand now, that there were mitigating circumstances in the apparently unjustifiable attitude of England; that when nations are engaged in a death struggle they cannot always adhere to the niceties of International Law. So we went to war over those two controversies under the battle-cry of "Free trade and sailors' rights."

What was the result?

Five days before war was declared—and we knew that it was coming for a long time—Great Britain withdrew the orders in council; she withdrew them because we had so negotiated with France that France was willing to withdraw the Berlin decrees so far as they applied to American

vessels. Great Britain had already declared that if the Emperor Napoleon withdrew his decree they would withdraw their orders in council. So before a shot was fired or war declared, one of the two causes for war had disappeared. Therefore for that cause blood-letting was unnecessary.

Now, what as to impressment? We lost thirty thousand men; the humiliation of the burning of our capitol; the expenditure of hundreds of millions of public funds; untold loss of private property, and not a single one of the questions involved in the war settled or even mentioned by the treaty of Ghent. The orders in council had been withdrawn; they had become an academic question; Napoleon had fallen and it was thought needless to reopen the question. The matter of impressment was not mentioned in the treaty and down to 1860 Great Britain refused to relinquish her attitude on that question.

We had indeed fought the war all to no purpose. It is true we gained a brilliant victory at New Orleans, because General Jackson forsooth did not know that the questions in controversy had been settled and that national honor required no more shedding of blood; and therefore we added some luster to our arms, to our military traditions and to our nation, but at the same time we shed a good deal of innocent and unnecessary blood in the settlement of a controversy that had already become moot.

That was the result of trying the abnormal method with Great Britain. What was the next step?

Bitter indeed was the feeling and loud the clamor of those who look upon force as the vindicator of honor, when the British authorities at Nassau in 1841 permitted the slave cargo of the famous ship "Creole" to go free. But in the end *homo sapiens* prevailed over *homo naturalis* and the American people decided to invoke the judgment of Providence in the form of a Law Court rather than as evidenced by trial by battle. The case was submitted to arbitration, a judgment rendering adequate compensation to the owners

of the vessel was obtained and the United States, without cost of blood or treasure, found its contentions vindicated and the "National honor" satisfied.

When the Alabama, fitted in a British port, swept our commerce from the ocean, was not our "national honor" at stake? Could there have been a more brilliant vindication of it than the decision of the great arbitral-tribunal at Geneva? Did American honor ever stand higher than when, in a time of feverish national excitement, after having fought the greatest of wars and while in possession of a body of trained veterans, the like of which has not yet been seen, the American people, by staying their hand and trusting in the inherent justice of their cause, won the greatest victory for peace, law and arbitration that the family of nations has yet witnessed.

When in 1891 Canadian vessels engaged in seal-hunting were seized in the Behring Sea by our Revenue Cutters, there was talk of "national honor" on both sides of the ocean. Even our Minister at St. James, a wise lawyer and an accomplished diplomat, fully believed that we should pay no heed to British protest but continue to vindicate our rights, which he thought so clear that Great Britain must certainly yield in the end. Calmer, wiser counsel fortunately prevailed. An *ex parte* judgment carries no guarantee of impartiality.

The rights of the United States in the Behring Sea and to the protection of the seal herd were, at the suggestion of Great Britain, finally submitted to arbitration. It is true that the United States did not there win, but I have yet to hear that our honor suffered, nor is it seriously contended that it would have been better to have continued the seizures and to have risked a war with Great Britain for the sake of a quantity of furs, easily reducible to a pecuniary value utterly out of proportion to the cost of even the most trifling military operations.

Was not the national honor of Great Britain at stake when Lord Salisbury, as representative of the Great British Empire, was told by President Cleveland that he must arbitrate a controversy? I do not believe the government of Great Britain had heard talk of that kind since the Battle of Waterloo. It must have sounded strange in their ears; and yet Lord Salisbury and the intelligent gentlemen who then composed that government acceded to arbitration because they were sufficiently wise, sufficiently humane and sufficiently intelligent and patriotic Britons to know they did not have a right to risk the integrity of their nation, their respectable place in the concert of the world powers, on a question of the boundary between Venezuela and British Guiana.

Why, for a hundred years there had been talk of the Newfoundland fisheries. The people of our Northern coasts had been very much excited over the question of fishing rights. The words "fishing rights" were fighting words for a long time. Does anybody hear anything more about fishing rights? It was all threshed out at The Hague, and instead of war, instead of mothers' tears and the cries of wounded soldiers, we only had the crocodile tears of retained lawyers, which, however painful they may be to listen to, on the whole are a very good substitute for the other kind of tears. They certainly leave no sorrow nor stain and they only sear the client's pocket.

I do not believe in any iridescent dream of pacificism. I do not believe that all the preaching in the world will change human nature or bring about universal peace all at once or perhaps for centuries, but I do believe that if we have a working proposition of the kind embodied in these treaties we shall be able to submit for arbitration all questions arising between us and at least two of the leading nations of the world—France, our life-long friend; Great Britain, from whom we have derived our institutions, our great common law, our love of individual liberty, our writ of

habeas corpus and the practical things that enable us to be, as we think we are, equal before the civil law.

Other nations have been invited to join in similar treaties and these are but the first great steps toward general arbitration. The idea advanced by some that these treaties are alliances, rests upon a ludicrous misconception or a pathetic remnant of atavistic race hatred.

Surely there is no reason why controverted questions that may arise between nations should not be settled by arbitration. Men talk of the Monroe doctrine. The Monroe doctrine is a matter of policy. The Monroe doctrine was invented by British statesmen as much as by our own. In 1822 it was advocated by Canning when the Holy Alliance, having destroyed most liberties in Europe, turned its eyes to the Spanish colonies that had revolted in America, counseling how they might be forced back into the Spanish allegiance. And it was then that Canning suggested that Europe should be notified that no intervention on the American continent would be allowed by the United States and Great Britain for the purpose of creating any new European jurisdiction there; and such has been our doctrine, a doctrine of vital safety from the beginning, acquiesced in by Great Britain, and which there is but little danger of any nation trying to break down.

In addition, the declaratory statement of Senator Root, which is to be ratified as part of the treaty, expressly says we do not mean to include among injusticiable questions the well-settled traditional policy of necessary safety—the Monroe Doctrine.

I say then, with much confidence, we are not dealing with any weak, wild dreams. I recognize the force of what a great philosopher, who has just died,—William James,—said, that war had its good side; you could decry its costs as much as you liked, and every sane man appreciates its horror and brutality, but in the history of the world it had been shown that the military side developed tremendous

qualities; that the poor little recruit, drilling in his barracks, stood, after all, for more than the great business man; that he stood for the solidarity of the nation; that he stood for the flag; that in his little person he represented the collective corporate life of the nation, while the individual, going about his own affairs, represented only himself.

There is much truth in that view. You must have a moral equivalent for war, if you are absolutely and wholly to eliminate it, and that moral equivalent will come when the individual who performs the humblest functions for the state, I care not what it is, when the most petty clerk in Washington, or Trenton, will feel that the dignity of the country is just as much at stake if he stoops to some dishonest act, if he shirks his duty, if he does a mean or cowardly thing, as army or navy officers feel to-day. A gentleman who had held the highest offices in our land was telling me a short time ago, decrying the growth of governmental function, that the government could not do anything well or honestly. I said, "How about the Panama Canal?" "Oh," he said, "that's done by army officers." I replied: "Do you think it is inconceivable that any other Americans but military officers should some day have as high a standard of honor and as much respect for the collective interests of the nation they represent as the man who wears brass buttons? Are brass buttons inseparable from honor?"

We will get the moral equivalent of war when the man who is in the service of the community recognizes that he performs as high, dignified and important a function for the whole people, regardless of his own personality and his own personal interests, as the man who wears a uniform.

It is said that modern wars are due to the desire for commercial advantage. I challenge the validity of the general proposition. Historic analysis would, I believe, indicate that war is very much more largely due to sentimental than to commercial considerations. The sentiment which

leads to war once aroused, it is almost impossible to avert the conflict, however unreasonable or inadequate the avowed grounds. Men in the mass usually act first and think afterward. We are only beginning to understand the psychology of the crowd. Human reason is of very recent development in the race and still performs only a subordinate role in the formation of opinion. Men are still governed by sentiments rather than by syllogisms. Wars are no longer due to the deliberate machinations of Lords and Cabinets but are rather the resultants of national temper, general exasperation, inherited antipathies and unreasonable prejudice.

The assurance in advance of any controversy that a method for its settlement has been provided will serve to reduce to a minimum the danger that these feelings will triumph over sanity and reason. The blowing up of a naval vessel will no longer set nations at war when the court is predetermined in which the alleged offender is to be tried and the responsibility definitely fixed.

An assurance that arbitration is the normal, natural, already admitted means of disposing of the controversy will render war between the United States, France or Great Britain a thing almost impossible. The union of these great nations in an arbitration agreement must widely influence world opinion and the secondary results would be almost more important than the immediate effects.

The idea often voiced that these treaties are advocated by dreamers, by weaklings, by pacifists out of contact with real life, knowing nothing of the fundamental instincts of humanity, recalls a statement by one to whom none has ever thought to attribute these defects. It is a credit to General Grant that, great warrior as he was, he believed in arbitration as the normal, sane method of settling disputes, for he says:

"Though I have been trained as a soldier and have participated in many battles, there never was a time when, in

my opinion, some way could not have been found to prevent the drawing of the sword. *I look forward to an epoch when a court, recognized by all nations, will settle international differences instead of keeping large standing armies as they do in Europe.*"

MR. MILLS :

Mr. Coudert to the contrary notwithstanding, I think, gentlemen, I am a very good prophet. We will have his address printed, with his permission, and sent to our members during the next few months.

I hear a motion of thanks to be extended to Mr. Coudert for his very able address. All in favor of that motion will please rise. [The entire audience arose.] It is carried unanimously.

MR. COUDERT :

I thank you.

MR. MILLS :

We will close our exercises by singing "Auld Lang Syne."

[Singing of "Auld Lang Syne."]

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